

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MICHELLE CLINE and KELLY
ENGSTROM, individually and on Behalf of
All Others Similarly Situated,

Plaintiffs,

v.

TOUCHTUNES MUSIC CORPORATION,

Defendant.

Civil Action No. 14 Civ. 4744 (LAK)

ECF CASE

**DECLARATION OF PATRICK BARRY IN SUPPORT OF NOTICE
OF SETTLEMENT AND JOINT MOTION FOR APPROVAL OF NOTICE PROGRAM**

I, Patrick Barry, declare as follows under penalty of perjury:

1. I am the Chief Financial Officer at TouchTunes Music Corporation. I submit this declaration based on my personal knowledge.

2. When a TouchTunes App user downloads and registers for the App, a user provides only an email address and a user name to TouchTunes. TouchTunes does not require a user to provide a mailing or billing address to TouchTunes and does not store any users' mailing or billing addresses.

3. Payments for songs purchased through the TouchTunes App are processed by a third party vendor (the "Third Party Processor"). TouchTunes does not have access to App users' payment information, including a user's billing address.

4. The Third Party Processor does not maintain the billing addresses for cardholders either and therefore could not provide user addresses to TouchTunes if TouchTunes were to request the addresses. The Third Party Processor processes payments, and verifies a user's address as part of that process, but does not store a user's billing address following the processing of individual payments. Therefore, TouchTunes does not have access to a user's billing address.

5. The average cost of a TouchTunes song credit is approximately \$0.40.

6. TouchTunes digital jukeboxes internally record their status and all user interactions to permit remote diagnosis and system recovery. The internal log for a TouchTunes digital jukebox reflects every use of the TouchTunes wireless remote and jukebox keypad. Before October 2012, these logs would be deleted on a daily or weekly basis and the logs were not collected or stored centrally by TouchTunes.

7. Beginning in October 2012, TouchTunes began storing logs to allow for centralized analysis and archiving. Therefore, from November 1, 2012 to October 28, 2013, TouchTunes can identify instances where a user's requested song did not play in full.

8. Before November 1, 2012, TouchTunes cannot identify instances where a user's requested song did not play in full.

9. TouchTunes conducted a sampling exercise to estimate the number of customers who may have had a song skipped using the wireless remote during the relevant time period. As a result of that exercise, TouchTunes estimated that more than 100,000 TouchTunes users would have had songs skipped by an individual using a TouchTunes-branded remote control from May 30, 2010 to October 28, 2013.

I declare under penalty of perjury, pursuant to 28 U.S.C. § 1746, that the foregoing is true and correct.

Executed on September 18, 2017
New York, New York

A handwritten signature in blue ink, appearing to read "Patrick Barry", is written above a horizontal line.

Patrick Barry